

***Latest tax
jurisprudence***
13 January 2011

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Agenda

Supreme Court Cases

- Southern Philippines Power Corporation vs. CIR, G.R. No. 179632 dated October 19, 2011
- CIR vs. Filinvest Development Corporation, G.R. Nos. 163653 & 167689 dated July 19, 2011
- Wilson P. Gamboa vs. Teves, et al., SC EB Case, G.R. No. 176579 dated June 28, 2011
- Rizal Commercial Banking Corporation vs. CIR, G.R. No. 170257 dated September 07, 2011
- Prudential Bank vs. CIR, G.R. No. 180390 dated July 27, 2011

Agenda

CTA cases

- **Triumph International (Philippines), Inc. vs. CIR, CTA EB Case No. 595 dated February 16, 2011 (CTA Case No. 7947)**
 - **Allied Banking Corporation vs. CIR, G.R. No. 175097, 5 February 2010**
- **Marubeni Philippines Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 557 dated March 23, 2011**
- **CIR v. The Insular Life Assurance Co., Ltd., CTA EB Case No. 585 dated March 14, 2011**
- **Aerotech Industries Philippines, Inc. vs. CIR, CTA Case No. 7964, 20 October 2011**

Southern Philippines Power Corporation vs. CIR

G.R. No. 179632, 19 October 2011



Southern Philippines Power Corporation (SPP) vs. CIR

Facts

- SPP generates and sells electricity to National Power Corporation (NPC).
- It applied for zero-rating of its transactions for 1999 and 2000. This was approved by the BIR.
- SPP filed claims for tax refund or credit with the CIR for 1999 and 2000.
- Before the lapse of the 2-year prescriptive period, SPP filed a petition for review covering its claims for tax refund or credit with the CTA.
- CIR & CTA (2nd Div): denied the claims of SPP
- CTA EB: affirmed the decision of CTA (2nd Div)

Southern Philippines Power Corporation vs. CIR

Issue

Whether or not SPP is entitled to a tax refund or credit considering that:

- a) its sales invoices and receipts only bear the words “BIR VAT Zero-Rate Application Number 419.2000” and do not have the words “zero-rated” imprinted on them; and
- b) it failed to declare its zero-rated sales in its VAT returns for the period subject of the claim.

Southern Philippines Power Corporation vs. CIR

Ruling:
Yes

- Section 110(A)(1) provides that any input tax should be evidenced by a VAT invoice or official receipt issued in accordance with Section 113 which has been amended by Republic Act (RA) 9337 but it is the unamended version (applicable was the Revenue Regulations [RR] 7-95) that covers the period when the transactions in this case took place.
- Section 113 does not make a distinction between receipts and invoices as evidence of a zero-rated transaction.
- Section 4.108.1 of RR 7-95 requires the printing of the words “zero-rated” only on invoices, not on official receipts.

Southern Philippines Power Corporation vs. CIR

- Actually, it is RA 9337 that required in 2005 the printing of the words “zero-rated” on receipts.
- Since the receipts and invoices in this case cover sales made from 1999 to 2000, what applies is Section 4.108.1, which refers only to invoices.

Southern Philippines Power Corporation vs. CIR

- The Court further ruled that SPP's failure to declare its zero-rated sales in its VAT returns for the period subject of the claim is not sufficient to deny its claims for tax credit or refund when there are other documents from which the CTA can determine the veracity of such claims.
- Such failure, if partaking of a criminal act under Section 255 of the NIRC, could warrant a criminal prosecution but such failure should not be a ground for the outright denial of the claims.

Southern Philippines Power Corporation vs. CIR

The Court granted the petition and remanded the case to CTA (2nd Div.) for determination of whether or not SPP complied with the other requisites provided under Section 112 of the NIRC, which governs the criteria for refund/tax credit.

CIR vs. Filinvest Development Corporation

G.R. Nos. 163653 & 167689, 19 July 2011



CIR vs. Filinvest Development Corporation (FDC)

Facts

- 3 January 2000, FDC and FAI both received a Formal Notice of Demand from the BIR, to pay the following taxes:

Deficiency Tax	Filinvest Development Corp. (FDC)	Filinvest Alabang, Inc. (FAI)
Income Tax	150M - 1996 5.7M - 1997	1.5B - 1997
DST	10.4M – 1996 5.8M - 1997	

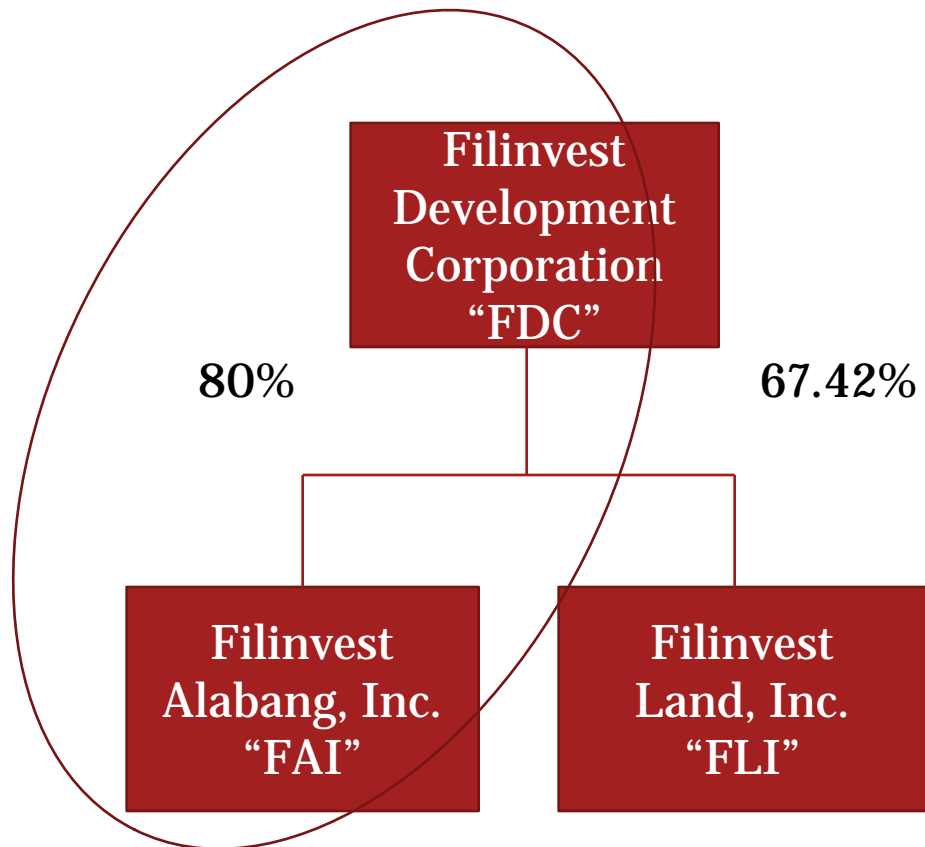
CIR vs. Filinvest Development Corporation (FDC)

Facts – 1st Issue

1996

Deed of Exchange

Land – PhP4.3B ← → Shares – 463M



CIR vs. Filinvest Development Corporation (FDC)

Facts – 1st Issue (cont'd)

Filinvest Development Corporation "FD"	Stockholder	Before	After
	FDC	67.42%	61.03%
	FAI	-	9.96%
	Others	32.58%	29.01%
	Total	100%	100%

Fi February 1997 Ruling – No gain or loss shall be recognized based
Alab on **Sec. 34(C)(2), now Sec. 40(C)(2)** of the Tax Code.

CIR vs. Filinvest Development Corporation (FDC)

1st issue

Whether or not the assessment on income tax is valid on the ground that the exchange of properties does not fall under the tax-free exchange as provided in Sec. 34 (C) (2), now Sec. 40 (C) (2) of the NIRC.

CIR vs. Filinvest Development Corporation (FDC)

1st Issue – Income tax on exchange of properties

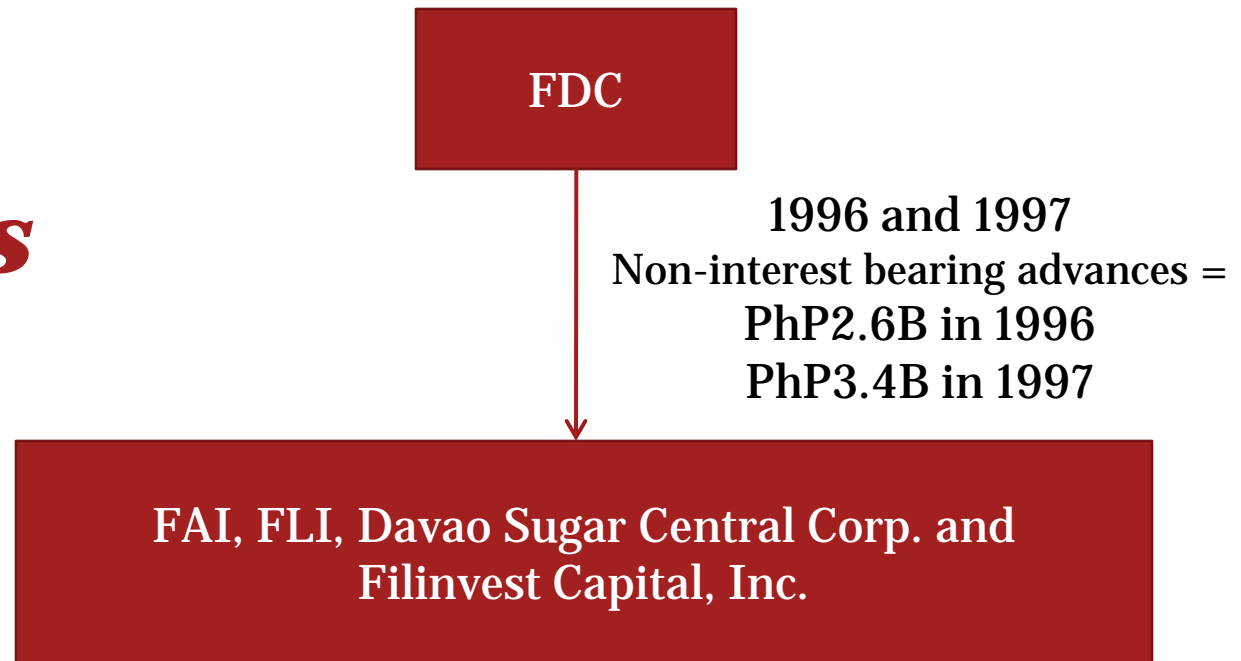
CIR	FDC
<ul style="list-style-type: none">-FDC's shareholdings diluted-No further control-FAI did not have control	<ul style="list-style-type: none">-Tax-free exchange pursuant to Sec. 34 (C)(2), now Sec. 40 (C)(2) of the Tax Code

Ruling

CTA	CA	SC
Not subject	Not subject	Not subject
<ul style="list-style-type: none">-FDC, together with FAI, gained control of FLI.-Non-retroactivity of rulings (Sec. 246 of the Tax Code)	Same	Same

CIR vs. Filinvest Development Corporation (FDC)

Facts – 2nd and 3rd Issues



Supporting documents: **instructional letters, cash and journal vouchers**

CIR vs. Filinvest Development Corporation (FDC)

2nd issue

Whether or not the CIR has the power to impute “theoretical interest”.

CIR vs. Filinvest Development Corporation (FDC)

2nd Issue – Imputed interest income on the advances

CIR	FDC
<ul style="list-style-type: none"> -Sec. 43, now Sec. 50 of the Tax Code -FDC obtained interest-bearing loans from banks and claimed interest expense 	<ul style="list-style-type: none"> -Power of CIR does not include power to impute “theoretical interest”

Ruling

CTA	CA	SC
Subject	Not subject	Not subject
<ul style="list-style-type: none"> -Sec. 43 will apply -Sec.482 of the US Tax Code as implemented by 1965-69 Regulations have persuasive effect -It is dubious for an entity to advance money without interest 	<ul style="list-style-type: none"> -contribution of capital -not loan agreements, hence, no interest -no fraud or evasion -foreign laws must be alleged and proved 	<ul style="list-style-type: none"> -CIR’s authority under the Tax Code does not include power to impute interest -There must be proof of actual receipt or realization of income -No evidence that advances were sourced from banks -Art. 1956 of the Civil Code

CIR vs. Filinvest Development Corporation (FDC)

3rd issue

Whether or not the assessment on DST is valid on the ground that the instructional letters and cash/journal vouchers are not loan agreements subject of the DST.

CIR vs. Filinvest Development Corporation (FDC)

3rd Issue – DST on advances

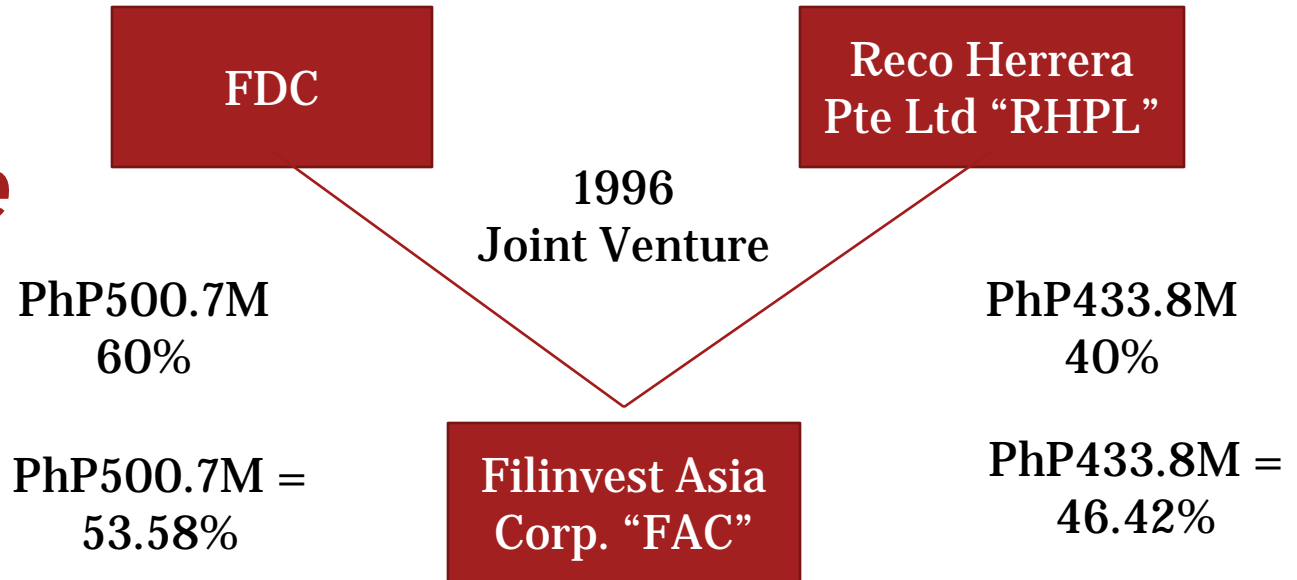
CIR	FDC
-Sec. 180 and 173 of the Tax Code -RR 9-94	-supported only by instructional letters and cash/journal vouchers

Ruling

CTA	CA	SC
Not subject	Not subject	Subject
-instructional letters and cash/journal vouchers not loan agreements -advances may mean not just loan of money	-BIR Ruling 108-99, which repealed 116-98, should be applied prospectively	-non-retroactivity not applicable to FDC since it is not the party who sought the ruling -Sec. 180 and RR 9-94

CIR vs. Filinvest Development Corporation (FDC)

Facts – 4th issue



- The JV was tasked to develop and manage FDC's 50% ownership of its PBCom Office Tower Project "the Project".
- FDC paid its subscription by executing a Deed of Assignment of its rights and interests in the Project worth PhP500.7M in favor of the JV.
- The BIR assessed deficiency income tax on the gain on the supposed dilution and/or increase in the value of FDC's shareholdings in FAC.

CIR vs. Filinvest Development Corporation (FDC)

4th issue

Whether or not the BIR properly imputed deficiency income taxes to FDC which was supposedly incurred by it as a consequence of the dilution of its shares in FAC.

CIR vs Filinvest Development Corporation ***G.R. Nos. 163653 & 167689, July 19, 2011***

4th Issue - Income tax on gain from increase in FDC's shareholdings

CIR	FDC
-FDC realized taxable gain	-gain not yet realized

Ruling

CTA	CA	SC
Not subject	Not subject	Not subject
-mere appreciation of capital not taxable -gain is realized upon disposition	Same	Same -no deficiency income tax can be assessed on the gain on the supposed dilution and/or increase in the value of FDC's shareholdings in FAC

Wilson P. Gamboa vs. Teves, et al.

Supreme Court *En Banc* Case, GR No. 176579, 28 June 2011



Wilson P. Gamboa vs. Teves, et al.

Facts

- Metro Pacific Assets Holdings (MPAH) , a subsidiary of First Pacific (FP), bought 46.1% stake (or 111,415 shares) of PTIC, which owns 13.847% of the total common stocks of PLDT.
- The remaining 54% of PTIC shares are already owned by FP and its affiliates.
- FP is a Bermuda-registered, Hong Kong-based investment firm.

Wilson P. Gamboa vs. Teves, et al.

- **Wilson P. Gamboa, a minority stockholder and a taxpayer, filed petition for prohibition, injunction, declaratory relief and declaration of nullity of indirect sale of PLDT shares.**
- **With the sale, FP's common shareholdings in PLDT increased from 30.7% to 37.0%, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47%.**
- **Petitioner posits that the term "capital" in Sec. 11, Art. XII of the Constitution refers to the ownership of common capital stock subscribed & outstanding, which can elect members of the BOD.**
- **Respondents argued that the term "capital" includes preferred shares as Constitution does not distinguish among classes of stock. They also questioned the procedural infirmities (e.g., lack of standing, lack of jurisdiction, etc.) of the petition and the supposed violation of the due process rights of the affected foreign common shareholders.**

Wilson P. Gamboa vs. Teves, et al.

Issue

Whether the term “capital” in Sec. 11, Art. XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common shares and non-voting Shares) of PLDT, a public utility.

Wilson P. Gamboa vs. Teves, et al.

Ruling:

- The term “capital” in Section 11, Article XII of the Constitution refers only to shares of stock that can vote.
- Considering that common shares have voting rights, the term “capital” refers only to common shares.
- However, if the preferred shares also have the right to vote in the election of the directors, the term “capital” shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors.

Wilson P. Gamboa vs. Teves, et al.

To construe broadly the term “capital” as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution.

Rizal Commercial Banking Corporation vs. CIR

G.R. No. 170257, 07 September 2011



Rizal Commercial Banking Corporation vs. CIR

Facts

- Rizal Commercial Banking Corporation (RCBC) is a private domestic commercial bank engaged in general banking operations.
- On 15 August 1996, RCBC received a Letter of Authority (LOA) covering all internal revenue taxes from 01 January 1994 to 31 December 1995.
- RCBC executed a Waiver of the Defense of Prescription up to 31 December 2000.
- Respondent issued on 27 January 2000 a Formal Letter of Demand (FLD).

Rizal Commercial Banking Corporation vs. CIR

- On 24 February 2000, RCBC filed a protest. On 20 November 2000, RCBC filed a petition for review before the CTA.
- Following the reinvestigation requested, RCBC received another FLD on 06 December 2000 which drastically reduced the amount previously assessed.
- On the same date, RCBC paid all tax deficiencies except the assessments for deficiency Final Tax on FCDU Income and DST, which remained to be subjects of its petition for review.
- The CTA-1st Division upheld the assessment for the remaining deficiency taxes and ordered the RCBC to pay the amount.
- RCBC elevated the case to the CTA En Banc but the petition was denied for lack of merit.

Rizal Commercial Banking Corporation vs. CIR

Issues

1. Whether or not the petitioner, by paying the other tax assessments covered by the waiver, is rendered estopped from questioning the validity of the said waivers; and
2. Whether or not the petitioner, as payee-bank, can be held liable for deficiency onshore tax, which is mandated by law to be collected at source in the form of FWT.

Rizal Commercial Banking Corporation vs. CIR

Ruling – 1st issue

RCBC is estopped from questioning the validity of the waivers.

- RCBC averred that the waiver executed by it is invalid for failure to indicate acceptance of the CIR.
- Petitioner further argues that the principle of estoppel does not signify a clear intention on its part to give up its right to question the validity of the waivers.

Rizal Commercial Banking Corporation vs. CIR

- Estoppel is clearly applicable to the case. A party is precluded from denying his own acts, admissions, or representations to the prejudice of the other party in order to prevent fraud and falsehood.
- RCBC's partial payment of the revised assessments issued within the extended period impliedly admitted the validity of the waivers.

Rizal Commercial Banking Corporation vs. CIR

Ruling – 2nd issue:

Petitioner is liable for the payment of deficiency onshore tax on interest income derived from foreign currency loans, pursuant to Sec 24(e)(3) of the Tax Code of 1993.

- RCBC contended that because the onshore tax was collected in the form of a FWT, it was the borrower, constituted by law as the withholding agent, that was primarily liable for the remittance of the said tax.

Rizal Commercial Banking Corporation vs. CIR

- Petitioner erred in citing RR 2-98 because the same governs collection at source on income paid only on or after January 1, 1998. Hence, said regulations obviously does not apply in the case.
- The liability of the withholding agent is independent from that of the petitioner. The former cannot be made liable for the tax due because it is the petitioner who earned the income subject to withholding tax. The liability for the tax remains with the petitioner because the gain was realized and received by him.

Prudential Bank vs. CIR

G.R. No. 180390, 27 July 2011



Prudential Bank vs. CIR

Facts

- Prudential Bank (PB) is a banking corporation organized and existing under Philippine laws.
- On 23 July 1999, petitioner received from respondent a FAN and a demand letter for deficiency DST on its:
 - a) Repurchase Agreement with the Bangko Sentral ng Pilipinas (BSP);
 - b) Purchase of Treasury Bills from the BSP;
and
 - c) Savings Account Plus (SAP) product.

Prudential Bank vs. CIR

- PB protested the assessment but it was denied by the respondent on 28 December 2001.
- PB filed with the CTA-1st Division a petition for review.
- CTA affirmed the assessment for deficiency DST on the SAP product but cancelled the assessment on the repurchase agreement and purchase of treasury bills. PB moved for reconsideration but the same was denied by the CTA-1st Div.
- PB appealed to the CTA En Banc but the latter denied the appeal for lack of merit. It affirmed the ruling of its First Division.

Prudential Bank vs. CIR

Issue

Whether or not petitioner's SAP product with a higher interest is subject to DST.

Prudential Bank vs. CIR

Ruling
Yes

Petitioner's SAP is subject to DST.

- A **certificate of deposit** is defined as “a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created”.
- PB claims that its SAP is not a certificate of deposit bearing interest because it is payable on demand and is evidenced by a passbook and not by a certificate of deposit.

Prudential Bank vs. CIR

- In *China Banking Corporation vs. CIR*, the SC ruled that the Savings Plus Deposit Account, which has the following features:
 - a) Amount deposited is withdrawable anytime,
 - b) It is evidenced by a passbook, and
 - c) The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in 30 days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate

- is subject to DST which are considered certificates of deposits drawing interest. A passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgment by a bank that it has accepted a deposit of a sum of money from a depositor.

Triumph International (Philippines), Inc. vs. CIR

C.T.A. EB CASE NO. 595, 16 February 2011

(C.T.A. Case No. 7947)



Triumph International (Philippines), Inc. vs. CIR

Facts

- Triumph received on 15 April 2008 a Formal Letter of Demand (FLD) from the BIR assessing it for deficiency income tax and VAT for calendar year 2004.
- In response to the FLD, Triumph protested on 15 May 2008.
- Respondent, dissatisfied with Triumph's explanation, sent a letter dated 6 October 2008 identified as "Re: FINAL DISPOSITION ON DISPUTED ASSESSMENT" demanding payment of its income tax and VAT deficiencies in the total amount of P320M for calendar year 2004.

The letter dated October 6, 2008 reads:

“While it is true that you filed your letter-protest within the statutory period of thirty (30) days from receipt of the FANs, you failed to submit the additional documents specified therein within the sixty-day statutory period to submit such documents . . .

Since our decision on said assessment is final, it is requested that your aforesaid deficiency tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to its delinquency. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise the said deficiency internal revenue taxes shall become final, executory and demandable. . .” *(Emphasis supplied.)*

Triumph International (Philippines), Inc. vs. CIR

Issue

Whether or not the letter dated 6 October 2008 addressed to the taxpayer constitutes clear and unequivocal language of the respondent on its final decision.

Triumph International (Philippines), Inc. vs. CIR

Ruling:
Yes

The 6 October 2008 letter constitutes a clear and unequivocal language on respondent's final decision on Triumph's disputed assessment.

- The contents of the letter dated October 6, 2008 disclose the following:
 - 1) the denial of petitioner's protest on the assessment concerning its alleged 2004 income tax and VAT deficiencies of P319,912,118.35;
 - 2) demand to pay petitioner's tax liabilities; and
 - 3) should the petitioner as taxpayer refused to immediately pay such alleged deficiencies, it was given opportunity to file an appeal with this Court (CTA).

Triumph International (Philippines), Inc. vs. CIR

- All these factors show finality of the decision on the disputed assessment which should have been immediately brought to the Court's attention.
- The CIR should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment similar to the case at bar.
- It is at this stage, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time.

Allied Banking Corporation vs. CIR

G.R. No. 175097, 5 February 2010



Allied Banking Corporation vs. CIR

Facts

- Preliminary Assessment Notice (“PAN”) was issued against Allied Banking Corporation (“ABC”)
- ABC filed a protest on the PAN.
- BIR denied the protest and demanded payment of the deficiency taxes through issuance of a Formal Letter of Demand (“FLD”).

Portions of the FLD is quoted hereunder:

“It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.”

Allied Banking Corporation vs. CIR

Facts

- Instead of filing a protest on the FLD, ABC appealed to the CTA.
- BIR argued that the appeal was prematurely filed with the CTA.

Allied Banking Corporation vs. CIR

Issue

Whether or not the Formal Letter of Demand issued by the BIR can be construed as a final decision of the BIR, hence appealable to the CTA.

Allied Banking Corporation vs. CIR

Ruling:
Yes

Based on the Tenor of the Formal Letter of Demand with Assessment Notices issued, the same was considered as BIR's final decision appealable to CTA.

“This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.”

BIR cannot dispute the appeal made by ABC since the BIR is now estopped

“The key to effective communication is clarity.”

Marubeni Philippines Corporation v. CIR

CTA EB Case No. 557, 23 March 2011



Marubeni Philippines Corporation v. CIR

Facts

- April 25, 2000: Marubeni Phils. Corp. (“MPC”) filed its Quarterly VAT Return for the first quarter ending March 31, 2000
- March 27, 2002: MPC filed a written claim for a refund/TCC for its unutilized input VAT credits
- April 25, 2002: MPC filed an amended claim for refund/TCC with the BIR (VAT claim was reduced from PhP3.91M to PhP3.89M)
- April 25, 2002: A judicial claim was simultaneously filed with the CTA
- As of the date of this decision, MPC’s administrative claim had not been acted upon by the CIR.

Marubeni Philippines Corporation v. CIR

Administrative Claim

- Close of taxable quarter: March 31, 2000
- Claim for refund: March 27, 2002 (filed on time)

Judicial Claim

- Claim for refund: March 27, 2002
- Petition for Review: April 25, 2002 (premature)

Marubeni Philippines Corporation v. CIR

Issue

Whether or not MPC's administrative and judicial claims for its unutilized input VAT were filed within the 2-year prescriptive period.

Marubeni Philippines Corporation v. CIR

Ruling

The administrative claim was filed on time but the judicial claim was premature.

- Heeding the mandatory period of 120 and 30 days is crucial in filing an appeal with the CTA
- Filing of MPC's claim for unutilized input VAT refund/credit before the CTA was premature since there was no CIR decision for the CTA to review, nor was there inaction on the CIR's part after the lapse of the 120-day period
- Case dismissed for lack of jurisdiction
- The 30-day period within which to file an appeal is jurisdictional and mandatory, failure to comply will bar an appeal

Marubeni Philippines Corporation v. CIR

<p><i>Atlas Consolidated Mining and Dev. Corp. v. CIR</i></p>	<p><i>CIR v. Mirant Pagbilao Corp. & CIR v. Aichi Forging Company of Asia, Inc.</i></p>
<ul style="list-style-type: none"> • reckon the 2-year prescriptive period from the date of filing of the return and payment of the tax due 	<ul style="list-style-type: none"> • reckon the 2-year prescriptive period from the close of the taxable quarter when the sales were made
<ul style="list-style-type: none"> • interpretation of the 1977 NIRC 	<ul style="list-style-type: none"> • interpretation of the 1997 NIRC
<ul style="list-style-type: none"> • no specific provision on judicial claim for unutilized input VAT refund/credit <ul style="list-style-type: none"> - there was a need to harmonize the provisions on refunds/credits and the 2-year prescriptive period for instituting a suit 	<ul style="list-style-type: none"> • RA 7716 and RA8424 specifically provided for a judicial recourse with the CTA within 30 days: (a) from receipt of the CIR's decision denying the claim or (b) after the expiration of 120 days
<ul style="list-style-type: none"> • no longer applicable because Congress clearly delineated both administrative and judicial claims for unutilized input VAT refund/credit in Sec. 112 of the 1997 NIRC 	<ul style="list-style-type: none"> • now the prevailing rule from the effectivity of RA 7716 (January 1, 1996)

CIR v. The Insular Life Assurance Co., Ltd.

CTA EB Case No. 585, 14 March 2011



The Tax Code exempts cooperatives from payment of DST and percentage tax. To enjoy this exemption, must cooperatives register with the Cooperative Development Authority (CDA)?

CIR v. The Insular Life Assurance Co., Ltd.

Facts

- Insular Life Assurance Co., Ltd. (Insular) is a domestic corporation registered with the SEC as a non-stock mutual life insurer
- 2004: Assessment Notice with Formal Letter of Demand (FLD) assessing Insular for deficiency DST on premiums on direct business/sums assured for calendar year 2002 amounting to a total of P94M (inclusive of increments).
- Insular timely filed a Protest Letter but was denied by the CIR in a Final Decision on Disputed Assessment (FDDA) for lack of factual and legal bases.

CIR v. The Insular Life Assurance Co., Ltd.

- From the denial, Insular appealed to CTA.
- CTA Second Division said that Insular sufficiently established that it is a cooperative company and therefore it is exempt from the DST on insurance policies it grants to its members.
- CIR filed Motion for Reconsideration (MR) but was denied.
- Hence, elevation to the CTA *En Banc*.

CIR v. The Insular Life Assurance Co., Ltd.

Issue

Whether or not Insular is exempt from DST.

CIR v. The Insular Life Assurance Co., Ltd.

Ruling:

Yes

Yes, INSULAR is exempt from DST.

- SC decision in Republic of the Philippines v. Sunlife Assurance Company of Canada (GR 158085, 14 October 2005) -
 - registration with the CDA is ***not*** essential before the assurance company may avail of the exemptions granted under Sec. 1999(a) of the 1997 NIRC, as amended. *Stare decisis et non quieta movere.*

CIR v. The Insular Life Assurance Co., Ltd.

Facts in *Sunlife* are substantially the same with the facts in this case:

- Insular and Sunlife are both engaged in mutual life insurance.
- Structures of both Insular and Sunlife were converted from stock life insurance corporation to non-stock mutual life insurance corporation for the benefit of policyholders pursuant to the Insurance Code of 1978 and prior to effectivity of the Cooperative Code of the Philippines (RA 6938).
- Insular and Sunlife claim to be a purely cooperative corporation duly licensed to engage in mutual life insurance business.
- Insular and Sunlife claim exemption from payment of the DST under Sec. 199(a) of the 1997 NIRC.
- In both cases, CIR requires registration with the CDA before tax exemptions are granted.

CIR v. The Insular Life Assurance Co., Ltd.

Sec. 123 (2d par) defines “cooperatives” as cooperative companies —

- Conducted by the members thereof,
- With the money collected from among themselves and solely for their own protection,
- And not for profit.

CIR v. The Insular Life Assurance Co., Ltd.

Insular sufficiently conforms to this definition.

- Insular is owned by its members who all own individual policies for life, health, or accident insurance.
- Insular's operations are funded by its members through payment of capital by way of premiums which in turn are paid in consideration for the insurance policies held and are pooled in a common fund.
- Insular is not organized for profit but licensed for mutual protection of members; the common fund is invested to earn additional income which in turn benefits the members-policyholders; any surplus over the benefit claims and incidental expenses are distributed back to the policyholders as return on premiums.

CIR v. The Insular Life Assurance Co., Ltd.

- The Tax Code does not require registration with the CDA in order to enjoy exemption from both DST and percentage tax, only RMC 48-91 does. The RMC definitely cannot prevail over the clear absence of the requirement under the Tax Code. The RMC cannot add a requirement when there is none under the law to begin with.
- Not even the Insurance Code requires registration with the CDA.

Aerotech Industries Philippines, Inc. vs. CIR

CTA Case No. 7964, 20 October 2011



**Procedural due process not violated despite lack of PAN
on additional issues; no period to suspend when period
expired.**

Aerotech Industries Philippines, Inc. vs. CIR

Facts

- On 1 December 2005, a PAN was received by Aerotech Industries Philippines, Inc. (AIPI) assessing it for deficiency income, EWT and WTC for the year 2002.
- AIPI filed its protest to the PAN on 15 December 2005.
- Without considering the position undertaken by AIPI in its protest, the BIR immediately issued the corresponding FAN on 10 January 2006 which AIPI received on 11 January 2006. AIPI again submitted a second protest through its letter dated 9 February 2006.

Aerotech Industries Philippines, Inc. vs. CIR

- **May 9, 2006: BIR issued a TVN authorizing the reinvestigation of AIPI's records.**
- **December 16, 2008: BIR issued a Post Reporting Notice (PRN) informing AIPI that a report of reinvestigation has already been submitted and that it is invited to an informal conference to discuss the findings.**
- **January 8, 2009: an informal conference was held on.**
- **January 15, 2009: AIPI later submitted its formal protest to the PRN.**
- **July 29, 2009: AIPI received the FDDA and Details of Discrepancies both dated July 22, 2009 cancelling the original assessments for deficiency income tax, EWT and WTC, but assessing AIPI for deficiency FWT.**

Aerotech Industries Philippines, Inc. vs. CIR

- The FDDA further stated that if AIPI is not agreeable to the FDDA, it may appeal this to the CTA or to the CIR within 30 days from the date of receipt of the FDDA, otherwise the same shall become final and executory.
- August 25, 2009: AIPI opted to appeal the FDDA to the CTA.

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Issues

1. Whether or not AIPI was deprived of its right to due process on the new assessment for deficiency FWT.
2. Whether or not AIPI can raise the issue of prescription on the FWT assessment for the first time on appeal.

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***Ruling –
1st issue:
No***

AIPI's assertion of denial of due process was found to be unmeritorious.

AIPI received on 16 December 2008 a PRN from the RDO which contained the new assessment; that AIPI attended the related informal conference and even protested the assessment through its letter of 15 January 2009. The PRN practically served as the PAN contemplated under the regulations.

In addition, since AIPI voluntarily opted to go to the CTA directly instead of pursuing an administrative appeal before the CIR notwithstanding that the latter option was clearly stated in the FDDA, its right to due process was not violated.

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***Ruling –
2nd issue:***

Yes

On the issue of prescription, the CTA ruled that AIPI should not be prevented from invoking prescription for the first time on appeal.

Considering that AIPI learned of the new assessment for FWT for the first time when it received the FDDA on 29 July 2009, and then opted to appeal the FDDA to the CTA within the 30-day period stated in the FDDA instead of appealing to the CIR, the Court has become the only forum for it to raise the issue of prescription.

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The suspension of the period of limitation under Section 223 of the NIRC does not apply to this case since there is no period to suspend when the same has already expired. Hence, the FWT assessments were cancelled and set aside on the ground of prescription.

Thank you

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